

## Senate Bill No. 1268

### CHAPTER 675

An act to amend Section 10061 of, and to add Chapter 2.5 (commencing with Section 2718) to Division 2 of, the Public Utilities Code, relating to water corporations.

[Approved by Governor October 3, 1997. Filed  
with Secretary of State October 6, 1997.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1268, Kelley. Water corporations: public water system: acquisition.

Existing law provides that water corporations, as defined, are public utilities subject to regulation by the Public Utilities Commission, including the commission's approval of rates charged by water corporations. In regulating these rates, the commission is authorized to consider the value of the public utility.

This bill would require the Public Utilities Commission to, for ratesetting and all other purposes within the commission's jurisdiction, use the standard of fair market value when establishing the rate base value for the distribution system of a public water system, as defined, acquired by a water corporation. If the fair market value exceeds reproduction cost, determined in accordance with existing law, the commission would be permitted to include the difference in the rate base for ratesetting purposes if it finds that the additional amounts are fair and reasonable. This bill would set forth specified criteria that the commission must consider in making the determination as to whether this amount is fair and reasonable. The bill also would make its provisions applicable to the acquisition of a sewer system by a sewer system corporation.

Existing law sets forth procedures by which a municipal corporation may lease, sell, or transfer a public utility owned and operated by it for furnishing water service.

This bill would require the municipal corporation, public agency, or public utility water corporation proposing to acquire a municipal corporation public utility for furnishing water service to disclose to the customers of the public water system to be acquired, a written statement of the price, terms, charges, savings, and added costs of the proposed acquisition.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 2.5 (commencing with Section 2718) is added to Division 2 of the Public Utilities Code, to read:

CHAPTER 2.5. PUBLIC WATER SYSTEM INVESTMENT AND  
CONSOLIDATION ACT OF 1997

2718. This chapter shall be known and may be cited as the Public Water System Investment and Consolidation Act of 1997.

2719. The Legislature finds and declares all of the following:

(a) Public water systems are faced with the need to replace or upgrade the public water system infrastructure to meet increasingly stringent state and federal safe drinking water laws and regulations governing fire flow standards for public fire protection.

(b) Increasing amounts of capital are required to finance the necessary investment in public water system infrastructure.

(c) Scale economies are achievable in the operation of public water systems.

(d) Providing water corporations with an incentive to achieve these scale economies will provide benefits to ratepayers.

2720. (a) The commission shall use the standard of fair market value when establishing the rate base value for the distribution system of a public water system acquired by a water corporation. This standard shall be used for ratesetting.

(1) For purposes of this section, “public water system” shall have the same meaning as set forth in Section 116275 of the Health and Safety Code.

(2) For purposes of this section, “fair market value” shall have the same meaning as set forth in Section 1263.320 of the Code of Civil Procedure.

(b) If the fair market value exceeds reproduction cost, as determined in accordance with Section 820 of the Evidence Code, the commission may include the difference in the rate base for ratesetting purposes if it finds that the additional amounts are fair and reasonable. In determining whether the additional amounts are fair and reasonable the commission shall consider whether the acquisition of the public water system will improve water system reliability, whether the ability of the water system to comply with health and safety regulations is improved, whether the water corporation by acquiring the public water system can achieve efficiencies and economies of scale that would not otherwise be available, and whether the effect on existing customers of the water corporation and the acquired public water system is fair and reasonable.

(c) The provisions of subdivisions (a) and (b) shall also be applicable to the acquisition of a sewer system by any sewer system corporation or water corporation.

(d) Consistent with the provisions of this section, the commission shall retain all powers and responsibilities granted pursuant to Sections 851 and 852.

SEC. 2. Section 10061 of the Public Utilities Code is amended to read:

10061. (a) Notwithstanding Article 1 (commencing with Section 10001) and this article, a municipal corporation, by following the provisions of this section, may lease, sell or transfer all or part of a public utility owned and operated by it for furnishing water service. As used in this section, “municipal corporation,” means a city or a city and county.

(b) Any municipal corporation owning and operating a public utility for furnishing water service, a part of which or all of which public utility is operated and used for furnishing water service outside the boundaries of the municipal corporation, may lease, sell or transfer, for just compensation all or any part of the portion of the public utility located outside the boundaries of the municipal corporation to any other municipal corporation, public agency or public utility water corporation upon the terms and conditions agreed upon by the selling municipal corporation if, by resolution adopted by a majority of its legislative body, it has determined that the public utility, or portion thereof, is not necessary for supplying water to its own inhabitants and if the acquiring entity by resolution adopted by a majority of the members of its legislative body or board of directors has concurred in the lease, sale, or transfer and the terms and conditions thereof and if the acquiring entity will be bound to render water service to the persons formerly served through the system being sold on terms and conditions which are just and reasonable and which do not unreasonably discriminate against the customers of the acquired entity.

(c) Any municipal corporation owning and operating a public utility for furnishing water service may sell or transfer, for just compensation, all or any part of the public utility located inside its municipal boundaries to any other municipal corporation, public agency, or public utility water corporation upon the terms and conditions agreed upon by the selling municipal corporation, if the sale or transfer is approved as follows:

(1) The municipal corporation, by resolution adopted by a majority of its legislative body, has determined that the public utility, or portion thereof, is not necessary for supplying water to its own inhabitants, or that its inhabitants will be provided with equal or better service by the acquiring entity on terms that are just and reasonable and do not discriminate against the customers of the acquired entity; and orders the issue submitted to the qualified voters of the municipality at a special or general election held for that purpose.

(2) The acquiring entity by resolution adopted by a majority of its legislative body or board of directors has concurred in the sale or transfer and in the terms and conditions thereof.

(3) The sale or transfer is approved by a majority of all voters voting on the issue in the election held for that purpose.

(4) The municipal corporation, public agency, or public utility water corporation proposing to acquire a municipal corporation public utility for furnishing water service shall disclose to the customers of the public water system to be acquired, not less than 30 days prior to the date of election for formal approval of the acquisition, a written statement which includes all of the following:

(A) A summary of the price and terms of the proposed acquisition.

(B) A comparison of the applicable water charges before and after the proposed acquisition.

(C) The estimated savings to be achieved or additional costs expected to result, or both, from the proposed acquisition.

(d) Subject to subdivision (e), a municipal corporation may lease a public utility furnishing water service by a resolution adopted by a majority of its legislative body and without lease term or other restrictions stated in any other provision of law.

(e) A municipal corporation acting pursuant to subdivision (c) shall specify the manner of soliciting and filing, and the method of evaluating, proposals for the acquisition of the public utility. Upon receipt and staff evaluation of a proposal or proposals the municipal corporation, if it determines that the proposal or proposals are responsive, shall schedule a public hearing, and notice thereof shall be published in accordance with Section 6066 of the Government Code. At the hearing, the municipal corporation shall examine proposals received and staff recommendations, and without lease term or other restrictions, may lease, sell, or transfer, for just compensation, the public utility to the entity that the municipal corporation finds best qualified to continue to provide equal or better service to the customers of the system. If the resolution proposes a sale, the resolution shall place the question on the ballot at the next regularly scheduled election or at a special election called for that purpose. The municipal corporation may, in its sole discretion, reject all proposals.

(f) Any agreement entered into before September 17, 1965, between municipal corporations for the lease, sale or transfer of all or any part of a public utility owned and operated by one of the municipal corporations and furnishing water service to the inhabitants of the municipal corporation to which the lease, sale or transfer is made is hereby validated.

